

219

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.1302 of 2015 (O&M)

Date of Decision: 03.07.2015

HARE RAM

.....Petitioner

Vs

SARITA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Atul Yadav, Advocate
for the petitioner.

Mr. Jatinder Nara, Advocate
for respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioner assails order dated 30.03.2015 passed by Sessions Judge, Gurgaon vide which appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 against the order dated 19.01.2015 passed by Judicial Magistrate Ist Class, Gurgaon has been accepted.

[2]. Application for permission to obtain the photograph of letter Mark 'C'/handwriting of Deepak for comparison of service record letter/handwriting by expert was moved by Hare Ram on the ground that applicant wants that photograph of Mark 'C'/handwriting of Deepak to be taken for comparison of service record/handwriting submitted by Deepak. The respondent has denied her handwriting/signature.

[3]. Prayer has been made that to prove the fact by handwriting expert to verify and submit his report after taking photograph in this regard for proper adjudication of the case.

[4]. Judicial Magistrate Ist Class, Gurgaon accepted the application on the ground that the case was remanded back by the Additional Sessions Judge, Gurgaon vide order dated 11.05.2012 with a direction that additional evidence be led in the present case to decide the case conclusively. The case was fixed for evidence. The application filed by Hare Ram does not violate the remand order of the learned Additional Sessions Judge as it was directed in the remand order that proper evidence be led for just decision of the case. The dismissal of such application would defeat the very purpose of remand order. Consequently, the application was allowed and handwriting expert on behalf of applicant was allowed to take photograph of service record/signature/letter/handwriting of Deepak of letter Mark 'C'.

[5]. Since denial of handwriting/signature has been projected, therefore, it was thought appropriate by the Judicial Magistrate Ist Class, Gurgaon to bring home the truth after allowing both the parties to lead evidence in consonance with the remand order dated 11.05.2012 passed by Additional Sessions Judge, Gurgaon.

[6]. Sarita being aggrieved against the order of the trial Court, assailed the same before the Appellate Court. The application was filed by Hare Ram after the death of Deepak (husband of Sarita). Photocopy of letter/Mark 'C' is the subject matter of service record of

Deepak who was working as Warder at District Jail, Faridabad. Sarita alleged that application for comparison of handwriting of deceased is not relevant for just decision of the case as the photocopy cannot be taken by the handwriting expert as letter/Mark 'C' is neither an admitted document nor its execution is proved.

[7]. Lower Appellate Court accepted the appeal on the premise that execution of letter/Mark 'C' is not proved even if the original of Mark 'C' is available on record, the same cannot be made subject matter of process of taking photograph as the document itself remained a mark document. According to Lower Appellate Court firstly mark 'C' has to be proved with other direct mode of proving the handwriting on the document and only then it can be used for the purpose of comparison. Since Mark 'C' is neither proved nor admitted, therefore, the same cannot be made subject matter of such comparison of service record. Lower Appellate Court without commenting upon relevancy of document Mark 'C' held that without proving the same as per law of evidence, it cannot be used for the purposes of comparison. On merits the order dated 19.01.2015 was set aside. On maintainability of the appeal, Lower Appellate Court held that even though appeal is not maintainable against procedural orders yet order in question has substantially affected the rights of the parties, so appeal is maintainable.

[8]. Learned counsel for the petitioner has submitted that original of letter Mark 'C' is available on record and by virtue of the same, comparison can be made by handwriting expert in order to

prove handwriting of deceased (Deepak). Learned counsel further submits that allowing such a relief would be in consonance with the spirit of remand order dated 11.05.2012.

[9]. In pursuance to order dated 19.01.2015 passed by Judicial Magistrate Ist Class, Gurgaon handwriting expert has already submitted his report dated 25.03.2015 concluding that disputed writings Q.1 to Q.5 on the statement of Mark 'C' are written by one and same person Deepak who is written the comparison writings S.1 to S.6 on the letters dated 06.01.2007, 22.04.2007 and 11.02.2007.

[10]. Learned counsel for the petitioner states that at this stage only procedural stages are to be fulfilled, leaving the evidentiary value of the document/report to be judged by the trial Court at the relevant stage.

[11]. I have considered the rival submission of both sides. Admittedly the case was remanded by Additional Sessions Judge, Gurgaon for fresh trial after further inquiry and for additional evidence under Section 83 Cr.P.C. In case mechanism of allowing photograph of the original Mark 'C' is allowed for report of expert then trial Court would be obligated to see the legality of report based on such comparison after allowing both the parties to lead their respective evidence.

[12]. The present stage is a stage just to foresee as what would be adduced in additional evidence without embarking upon its merit at this juncture. Even if no prejudice is going to be caused to respondent as legality and admissibility of such report can always be

gone into by trial Court after such comparison at the relevant stage, but certainly Court is conscious of the fact that comparison may not end in vacuum.

[13]. The objection as raised by party with regard to admissibility of such report based on unproved document can very well be taken into consideration by the Court. Outcome of such comparison should stand the test of legality and admissibility, otherwise it would be an exercise in futility. Since the document with which comparison is sought to be made in itself is unproved document, no strength can be gathered by virtue of its being original on record.

[14]. In **Hoffman Andreas v. Inspect of Custom, Amritsar (2000) 10 SCC 430**, the Apex Court held that the Court should adopt latitude and liberal view in the interest of justice particularly when the Court has unbridled powers in procedural law and should afford the parties opportunity in the fairest manner possible. No latitude can be given in the instant case as the consideration before the Court is to visualise as determinative factor that whether the evidence in question can advance the case of either party on legal principles. The report based on a document whose execution in itself is not proved would bring the admissibility of such report to the fore.

[15]. Genuineness of such report cannot be left for ultimate consideration of the trial Court. The document would remain a mark document in the absence of proof of its execution. The Court cannot lose sight of the incoming event, which will not improve the status of report based upon such mark document. In such an eventuality, the

Court should be guided by restrictive mechanism.

[16]. In view of aforesaid, no illegality is noticed in the order passed by Lower Appellate Court.

[17]. With these observations, the petition is dismissed while upholding the order dated 30.03.2015 passed by Lower Appellate Court.

July 03, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**